

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **CHAIRMAN BILL GLASER**, on March 24, 2003 at
3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Bill Glaser, Chairman (R)
Sen. Bob Story Jr., Vice Chairman (R)
Sen. Jerry W. Black (R)
Sen. Mike Cooney (D)
Sen. Jim Elliott (D)
Sen. Royal Johnson (R)
Sen. Don Ryan (D)
Sen. Tom Zook (R)

Members Excused: Sen. Edward Butcher (R)
Sen. Jeff Mangan (D)

Members Absent: None.

Staff Present: Tari Elam, Committee Secretary
Connie Erickson, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 540, 3/20/2003; HJ 12, 3/20/2003
Executive Action: HJ 12; HB 302

HEARING ON HJR 12

Sponsor: REPRESENTATIVE DAN FUCHS

Proponents: NONE

Opponents: NONE

Informational Witnesses: NONE

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 0.6 - 3.5}

REPRESENTATIVE DAN FUCHS, HD 15, Billings, brought forward a resolution encouraging the United States Congress to pass an act that supports and authorizes individuals to interdict terrorism wherever it may occur on the soil of the United States. **REP. FUCHS** explained the purpose of the resolution is to encourage Congressional approval of the "Terrorist Free America Act." He stated the "Act" places the world on notice that all Americans are on duty twenty-four hours a day, seven days a week, in the fight against terrorism on American soil. He briefly outlined amendments made by members of the House, and explained the resolution's request that individuals receive immunity for acts done in the prevention of terrorism.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 3.9 - 5}

SENATOR MIKE COONEY, referring to page two, lines 29-30, asked **REP. FUCHS** if it was the intention of the bill to request whatever direction Congress may take, that individuals who prevent terrorist activities be exempt from civil and criminal penalties. **REP. FUCHS** replied in the affirmative.

Closing by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 5.1 - 5.7}

REP. FUCHS reiterated the timeliness of the resolution, and requested the Committee recommend Do Concur.

EXECUTIVE ACTION ON HJR 12

Motion/Vote: SEN. JOHNSON moved that HJR 12 BE CONCURRED IN.
Motion carried 8-0; with BUTCHER and MANGAN excused.

HEARING ON HB 540

Sponsor: REPRESENTATIVE DAVE GALLIK

Proponents: Travis Ahner, Montana Trial Lawyers'
Association (MTLA)
Spook Stang, Executive Vice President,
Montana Motor Carriers Association
Webb Brown, Montana Chamber of Commerce

Opponents: Harold Blattie, Montana Association of
Counties (MACo)

Informational Witnesses: Nancy Sweeney, Clerk of District Court,
Lewis & Clark County, & Chairperson,
Legislative Committee for the Montana
Association of Clerks of Court

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 7.3 - 14.1}

REPRESENTATIVE DAVE GALLIK, HD 52, Helena, brought forward a bill revising the laws relating to the selection of trial juries by expanding the potential pool to all qualified persons with a Montana driver's license or state identification card. He stated the bill will allow for jury pools to be selected from a combined list of driver's license holders and registered voters; and noted, with the exception of Mississippi and Puerto Rico, Montana is the only state that continues to select jury pools solely from voter registration lists. He expressed concern over the number of people who are not registered to vote, and who do not register because they do not want to serve on a jury. He also noted the proposed method for selection provides a true cross-section of the public, because although many people will not exercise their rights in the political process, almost everyone drives. He read from a memorandum written by a District Court judge indicating jury pools for federal courts are done by driver's license.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 14.3 - 21.0}

Travis Ahner, MTLA, conveyed his organization's support for the bill. He stated it is quite simply a good idea to expand the potential pool for juries to those citizens who might not otherwise be called. He expressed appreciation to the Committee.

Spook Stang, Executive Vice President, Montana Motor Carriers Association, conveyed his support for **HB 540**. He referred to a United States Supreme Court decision in which juries and the Seventh Amendment were discussed, noting the larger the potential pool the more likely a truly representative cross-section of the community would be found. He also discussed the impact of automatic exemptions for certain professions, indicating this practice is being reconsidered in states such as New York. **Mr. Stang** stated he would like the bill to include a "lengthy jury trial fund" to ensure more professionals will serve on juries, and to further restrict the number of excuses that may be used to establish a hardship exemption. He would also like the bill to include a protective measure for individuals who serve on juries, and work for small business, that they will not be terminated upon return.

Webb Brown, Montana Chamber of Commerce, conveyed his organization's support for the bill. Although he does not believe the bill will address all issues regarding why people do not want to serve on juries, it is a good start to expanding the pool.

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 21.3 - 24.5}

Harold Blattie, MACo, stated, although he believes the bill presents a fine concept, his organization's opposition arises from concerns over practical application of the procedural aspects of the bill. A major concern for counties is the existence of various programs presently utilized for voter registration and whether those programs will be compatible with the driver's license software. He stated there may be a substantial cost for ensuring compatibility. Also, many people have variations of their name, for example, J. Jones, John L. Jones, or John Lawrence Jones. This will create a duplication problem that may take an inordinate amount of time and resources to resolve. So too, multiple addresses.

Informational Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 24.7 - 26.4}

Nancy Sweeney, Clerk of District Court, Lewis & Clark County, & Chairperson, Legislative Committee for the Montana Association of Clerks of Court, stated her agency is not opposed to the proposal contained in the bill. However, she would appreciate an assurance regarding the distribution of coordinating software. She believes there will be an additional cost to counties arising from having to call large jury pools.

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 26.6 - 31}

{Tape: 1; Side: B; Approx. Time Counter: 1.9 - 24.3}

SENATOR TOM ZOOK, referring to a bill passed by the Senate last session, inquired about the status of the bill upon hearing in the House. **REP. GALLIK** replied the bill did not pass the House and noted the bill has been presented on several occasions.

SEN. ZOOK asked **Ms. Sweeney** how many people are normally called for duty. **Ms. Sweeney** stated each jury pool represents an individual decision on the part of the Clerk of Court. For example, if the case were against the State of Montana or a capital case seeking the death penalty, Lewis & Clark County would call additional jurors.

SENATOR MIKE COONEY inquired about the positions of the Department of Justice and Department of Motor Vehicles on the bill. **REP. GALLIK** stated **Dean Roberts, Administrator, Department of Justice, Motor Vehicles Division**, assisted him with various revisions to the bill and testified in support before the House Judicial Committee, however, he was uncertain why **Mr. Roberts** was not present today. **SEN. COONEY** conveyed his knowledge regarding prior legislation that urged the Department of Justice and the Department of Voter Registration to work together toward this same goal, which was unsuccessful because there seemed to be irreconcilable technical problems. He asked, given it appears the difficulties still exist, whether **REP. GALLIK** had considered utilizing solely the driver's license list until such time as various agencies are able to effectively communicate through software. **REP. GALLIK** replied he had given consideration to the proposal, however, there are numerous registered voters who take their civic duty seriously but do not drive. This proposal was the best way achieve the goal given technical limitations and concerns by 2006. **SEN. COONEY** expressed his thoughts on the underlying concerns and his support for the bill.

SENATOR BOB STORY, referring to proponent testimony on how to make serving on a jury easier, asked for **REP. GALLIK's** thoughts

on the suggestions. **REP. GALLIK** replied each suggestion proposed is valuable, even though not addressed by this measure. He does see the need for additional proposals to go forward in the future. **SEN. STORY** asked whether **REP. GALLIK** would be amenable to an amendment protecting a person's job should they serve on a jury. **REP. GALLIK** replied an amendment is unnecessary because the protection already exists in current law. **SEN. STORY**, referring to **REP. GALLIK's** testimony regarding improving the pool of jurors, asked whether **REP. GALLIK's** comment was indicative of his thoughts on registered voters. **REP. GALLIK** explained his statement was intended to convey a better cross-section of community members in total would be made available, it was not intended to convey that registered voters are less qualified.

SENATOR JIM ELLIOTT asked if it were possible to have coordination of the two lists done through the Secretary of State's office. **REP. GALLIK** replied it would be possible, however, the Department of Justice has more adequate technology at the present time.

SEN. ELLIOTT asked **Ms. Sweeney** for her thoughts on to whom responsibility for coordinating the various lists falls. **Ms. Sweeney** replied Section Four of the bill assigns the duty to the Clerk's office. She, too, believes it might be prudent to include the Secretary of State's office in the process. She noted an additional difficulty arising from motor vehicle information: it is not readily apparent in which ward a person lives. **SEN. ELLIOTT**, referring to persons who do not update their address upon relocation to either driving authorities or voter's registration, asked if **Ms. Sweeney's** experience on the matter was similar. **Ms. Sweeney** indicated that issue is another concern of her agency.

SEN. COONEY indicated at the conclusion of his last experience serving on a jury the judge asked whether any person who had served would like to be removed from the list for future consideration. He asked **Ms. Sweeney** if that practice only occurs in Lewis & Clark County, or is it a state-wide practice. **Ms. Sweeney** stated there is no statutory exemption for individuals having served once. It is the policy of Lewis & Clark County judges to allow an individual who has served on a jury through deliberation and completion to be excused for the remainder of the year in which they served, and for the following year.

SEN. STORY stated the problem seems to be the information required by various agencies. He asked **Ms. Sweeney** for her thoughts on how to solve the problem. **Ms. Sweeney** stated the

largest part of that particular issue is the definition of voting districts. She provided several examples.

Closing by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 24.5 - 25.6}

REP. GALLIK expressed his appreciation to the Committee for a good hearing. He asked the Committee to remember the bill does not become effective until 2006, at which time technology will be available.

CHAIRMAN BILL GLASER, noting the time available for consideration of the bill, appointed a subcommittee consisting of **SENATORS JERRY BLACK, EDWARD BUTCHER, and MIKE COONEY** to fully evaluate the bill's proposal and practical application. He requested the subcommittee report their findings to the Committee on Monday, 31 March.

EXECUTIVE ACTION ON HB 630

{Tape: 1; Side: B; Approx. Time Counter: 26 - 31}

{Tape: 2; Side: A; Approx. Time Counter: 0.2 - 31.5}

{Tape: 2; Side: B; Approx. Time Counter: 1.4 - 13}

Motion: **SEN. STORY** moved that HB 630 BE CONCURRED IN.

Discussion:

Connie Erickson reminded the Committee there were amendments distributed during the original hearing. Those amendments were revised.

Motion: **SEN. STORY** moved HB 063003.AEM.

Discussion:

SENATOR TOM ZOOK inquired whether the amendment removes the statutory appropriation. **Ms. Erickson** replied in the affirmative. She explained the amendments address the issues of cash flow and the disbursement of funds.

SEN. STORY stated his understanding is the amendments remove the fiscal note. He explained any revenue received within the revenue estimate is placed in the guaranty account; any revenue received above the revenue estimate will be placed in a flex

account. Since the revenue estimate is calculated to fund schedules, there is no fiscal impact.

Ms. Erickson provided additional instruction on how the amendment modifies the bill.

SENATOR ROYAL JOHNSON inquired whether any person in the audience was prepared to provide additional information with regard to the amendments.

SEN. ZOOK stated his understanding was the original bill contained a statutory appropriation. He explained he was not able to support that effect, therefore, amendments were proffered. He requested authorization to pose a question to **Ellen Engstedt, Executive Vice President, Montana Wood Products Association**; without objection. **SEN. ZOOK** inquired whether **Ms. Engstedt's** understanding regarding the statutory appropriation was the same. **Ms. Engstedt** replied in the affirmative, noting the original bill was not drafted to do so, however, **OPI** suggested the statutory appropriation amendment when the bill was forwarded to the Senate.

CHAIRMAN GLASER indicated his interpretation of the amendment was that it created a statutory appropriation because all money in excess goes into a flex account and is then distributed. He inquired whether this was **SEN. ZOOK's** intention.

SEN. ZOOK replied in the negative, stating his intention was to ensure once a certain amount was received the legislature would distribute the money. He stated, although the money belongs to the schools, he does believe legislative oversight should be in place.

SEN. STORY explained the guaranty account was created to ensure no trust income is commingled with general fund money. He stated all revenue will flow into the guaranty account regardless, and, if the legislature does not desire the money to be distributed without oversight then there is no need for the bill. He stated on the House side this bill is coupled with a timber harvest bill.

SEN. ZOOK reiterated his concern with the statutory appropriation aspect of the bill and no legislative oversight.

SEN. JOHNSON asked for additional clarification regarding the amount of money potentially available. **Kathryn Bramer, Personnel Director, Office of Public Instruction (OPI)**, stated she worked on both the bill and the amendments. She explained the bill has a zero dollar fiscal impact because it is based on the \$45.5

million projection. The only time the bill will take effect is when school trust land revenue exceed projections. **SEN. JOHNSON** inquired whether the bill provided authorization to spend the \$45.5 million. **Ms. Bramer** replied in the negative. She stated the amendment does not create a statutory appropriation, it simply directs money received in excess of the projection into a flex account. **SEN. JOHNSON**, noting **Ms. Bramer's** response, inquired whether her agency would seek authority to spend the money in the flex account. **Ms. Bramer** replied in the negative, explaining any money placed into the flex account will accumulate until the legislature convenes and appropriates the money in two years. She reiterated there is no authority to distribute any funds received. **SEN. JOHNSON**, referring to page two, item (a), asked **Ms. Bramer** what the language contained therein meant. **Ms. Bramer** replied there is a portion of revenue received into the flex account connected to timber sales which does contain a statutory appropriation, however, that authority does not extend to this revenue. She explained any revenues from timber harvesting in excess of 18 million board feet per year are allocated to the flex account, and there is a statutory appropriation tied to those dollars. **SEN. JOHNSON** restated his question, asking directly whether the amendments change **OPI's** authority to spend money in the account. **Ms. Bramer** replied in the negative.

SEN. ZOOK, referring to page two of the fiscal note, stated if the money goes to the flex account it is not part of the guaranty account, and therefore does effect base aid. **Ms. Bramer** stated she was not prepared to address all issues contained within the fiscal note, however, the fiscal note does not incorporate the proposed amendments. She stated the amendments bring the fiscal note's impact back to zero. **SEN. ZOOK** inquired about the impact in the next biennium. **Ms. Bramer** stated she could not respond because revenue projections are not available.

SEN. STORY provided a brief explanation regarding money received in excess of the revenue estimate. He stated he was not aware that **OPI** needed an appropriation to spend money in the special revenue account.

SEN. COONEY stated he too would appreciate additional clarification on the question.

Madalyn Quinlan, Chief of Staff, OPI, stated the money cannot be spent without a statutory appropriation.

Jim Standaert, Office of Budget & Program Planning, stated there would be a line-item in **HB 2** to spend any money contained in the flex account.

SEN. COONEY inquired whether a statutory appropriation would eliminate the need for the line-item. **Mr. Standaert** replied in the affirmative.

SEN. COONEY stated the bill creates a gamble then in the event of a very profitable year, with a large amount of money going into the flex account. He asked whether there is currently a ceiling on state trust money. **Tom Schultz, Administrator, Department of Natural Resources & Conservation**, replied in the negative. He stated every year there are forecasted numbers, but there is really no set revenue. The fund generally averages between \$44 and \$45 million, and interest generated from the fund is distributed in addition to proceeds. **SEN. COONEY** inquired whether there is a record for how many years revenue exceeded projections. **Mr. Schultz** replied he believes revenue exceeded the projected estimate in one out of the past five years. **SEN. COONEY**, using an example where the trust receives \$47 million (\$2 million in excess of estimate), asked where the money would go under present law. **Mr. Schultz** replied all money received goes to the guaranty account at present. When the legislature meets there is a specific amount of money from the trust fund which is available to fund base aid; this bill, together with the amendments, will limit funding of base aid to the projected estimate. He stated, according to his understanding, the legislature will need to grant authority to spend money in the flex fund.

CHAIRMAN GLASER, referring to page one of the amendments, amendment number five, stated the money must be distributed to public school districts in the ensuing fiscal year. He explained the amendment provides the directive, there is no additional effort on the part of the legislature necessary. While he believes this may be an appropriate use of the flex account, he does not believe the language contains any requirement to seek legislative appropriation.

Mr. Standaert stated there are two flex accounts: one at the state level, and one at each district's level. He stated if money is placed in the state flex account, it will remain in the account until a legislative appropriation authorizes the money to be spent. If excess money is removed from the guaranty account and placed directly into a district level flex account, the state's flex account is bypassed.

SEN. ZOOK stated the later of **Mr. Standaert's** suggestions bypasses the appropriations process completely. He asked if **OPI** intended the money go into the state flex account. **Ms. Quinlan** replied in the affirmative. **SEN. ZOOK** inquired how then the appropriations process would be bypassed. **Ms. Quinlan** replied there are two options: 1) a statutory appropriation which bypasses the legislative decision making process; and, 2) a line-item appropriation in **HB 2** which places money into the state flex fund. The second option makes money available to **OPI** for distribution to school districts and does not require further appropriation to spend the money. However, **OPI** does need authority to remove money from the state flex fund for distribution to schools.

SEN. COONEY, referring to testimony provided during the hearing on **HB 630**, stated the bill's purpose is to provide additional money directly to schools. If that is the goal, the question becomes what is the most effective and efficient way to accomplish the goal. If not, then this bill may not be the vehicle.

SEN. ZOOK emphasized his concerns regarding terminology contained in the amendments.

CHAIRMAN GLASER inquired whether **SEN. ZOOK** would prefer additional time for consideration and research. **SEN. ZOOK** replied in the affirmative.

SEN. STORY, referring to his earlier comments regarding this bill being tied to timber resources, and given responses by various persons on the topic, asked why the two bills were tied together. **Ms. Bramer** stated there is coordinating language between this bill and **HB 537**, and explained the original considerations.

SEN. JOHNSON asked **Ms. Bramer** if the money becomes a part of state aid for schools. **Ms. Bramer** deferred to **Ms. Quinlan**. **Ms. Quinlan** explained any money not a part of the "timber harvest for technology" money is used to fund schedules and looks a lot like general fund money. To the extent the money is available from common school interest and income, the appropriation from the state's general fund needs to be less to fund the schedules.

SEN. JOHNSON, referring to charts created by **OPI**, asked whether the figure for money provided by the state includes trust fund money. **Ms. Quinlan** replied in the affirmative, noting the charts typically show general and guaranty fund contributions.

SEN. STORY, given concerns raised during discussion, **WITHDREW** his **MOTION THAT HB 630 BE CONCURRED IN.**

EXECUTIVE ACTION ON HB 302

{Tape: 2; Side: B; Approx. Time Counter: 14.9 - 27.7}

Motion: SEN. ZOOK moved that HB 302 BE INDEFINITELY POSTPONED.

Discussion:

SENATOR DON RYAN stated he did not think the bill should be indefinitely postponed. There has been a great deal of work put into the plan, and most schools have requested assistance in dealing with the issue. Although the plan needs some adjusting, he believes to let the plan go entirely is a real disservice to schools.

SEN. JOHNSON indicated he believes it is a disservice to impose an unfunded mandate on schools, and particularly one which does not address the issue of school employees who have no insurance at present.

SEN. ZOOK stated, were it not for the mandate contained in the bill, he would be in favor of the plan. According to proponent testimony, the bill will not work without a mandate, and some schools have very successful programs that employees are very happy with. Accordingly, he cannot support the bill.

SENATOR JIM ELLIOTT stated his opposition to the motion is based upon the need to make this type of coverage available. However, he does agree those schools that have been successful should not be forced into accepting a more risky proposition. He stated he requested an amendment be prepared which will allow schools to opt-out.

SENATOR JERRY BLACK stated the issue underlying this bill has been very difficult for everyone involved. He believes in order to ensure the success of the program it must be mandatory. In doing so, however, unwilling participants will be at odds with the program and will lend to its' failure. He stated, until such time as the various parties can come together on the issue, he cannot support the bill. He would like to continue seeking solutions because the issue is significant.

SEN. RYAN stated while his district has one of the most successful programs members of the community realize the rising costs of healthcare could easily push their plan into a position of becoming actuarially unsound. He is certain if some schools are allowed to opt-out, the adverse selection that has benefitted insurance companies for years will occur. Sometimes decisions

must be made for the greater good of all. He reiterated his opposition to the motion.

CHAIRMAN GLASER stated there are one hundred schools left out of this plan, and there are possibly fifteen school districts that have very successful insurance plans. He does not believe a state-wide program is dead simply because the legislature indicates this particular bill is not the vehicle in this session. There is also a Senate bill the House may take under consideration. He reiterated his concern regarding the one hundred schools that are in the worst situation being left out of the plan.

Vote: Motion that HB 302 BE INDEFINITELY POSTPONED carried 6-4 with COONEY, ELLIOTT, MANGAN, and RYAN, via proxy, voting NO, and BUTCHER, via proxy, voting AYE.

ADJOURNMENT

Adjournment: 5:40 P.M.

SEN. BILL GLASER, Chairman

TARI ELAM, Secretary

BG/TE

EXHIBIT (eds62aad)